UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ANDRE C. BROWN,

          Petitioner,

                                      CASE NO. 1:14-CV-1184

v.

                                        HON. ROBERT J. JONKER

THOMAS WINN,

          Respondent.

_____/

ORDER APPROVING AND ADOPTING
REPORT AND RECOMMENDATION

The Court has reviewed Magistrate Judge Kent's Report and Recommendation in this matter (ECF No. 13) and Petitioner's Objections (ECF No. 14). Under the Federal Rules of Civil Procedure, where, as here, a party has objected to portions of a Report and Recommendation, "[t]he district judge . . . has a duty to reject the magistrate judge's recommendation unless, on de novo reconsideration, he or she finds it justified." 12 WRIGHT, MILLER, & MARCUS, FEDERAL PRACTICE AND PROCEDURE, § 3070.2, at 451 (3d ed. 2014). Specifically, the Rules provide that:

> The district judge must determine de novo any part of the magistrate judge's disposition that has been properly objected to. The district judge may accept, reject, or modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instructions.

FED. R. CIV. P. 72(b)(3). De novo review in these circumstances requires at least a review of the evidence before the Magistrate Judge. *Hill v. Duriron Co.*, 656 F.2d 1208, 1215 (6th Cir. 1981). The Court has reviewed de novo the claims and evidence presented to the Magistrate Judge; the Report and Recommendation itself; and Plaintiff's objections. The Court finds the Magistrate

Judge's Report and Recommendation, which recommends denying Petitioner's habeas corpus petition, factually sound and legally correct.

In his Objections, Petitioner primarily reiterates and expands arguments made in his original briefing. Nothing in his Objections changes the fundamental analysis. The Magistrate Judge properly determined that the concurrent sentence doctrine applies in this case. In his Objections, Petitioner offers no claim of prejudice from the application of the doctrine beyond a general assertion that he should not have been convicted. Moreover, the Court agrees with the Magistrate Judge's alternative determination that Petitioner is not entitled to relief on the merits of his habeas petition in any event, for the very reasons the Report and Recommendation details. Dismissal of the petition is appropriate based on the application of the concurrent sentence doctrine and, alternatively, on the merits of the case.

Before Petitioner may appeal the Court's dismissal of his petition, a certificate of appealability must issue. 28 U.S.C. § 2253(c)(1)(B); Fed. R. App. P. 22(b)(1). The Federal Rules of Appellate Procedure extend to district judges the authority to issue certificates of appealability. Fed. R. App. P. 22b); see also *Castro v. United States*, 310 F.3d 900, 901-02 (6th Cir. 2002). Thus the Court must either issue a certificate of appealability indicating which issues satisfy the required showing or provide reasons why such a certificate should not issue. 28 U.S.C. § 2253()(3); FED. R. APP. P. 22(b)(1); *In re Certificates of Appealability*, 106 F.3d 1306, 1307 (6th Cir. 1997).

A certificate of appealability may issue "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). To make the required "substantial showing," Petitioner "must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." *Miller-El v. Cockrell*, 537 U.S. 322, 338 (2003) (quoting *Slack v. McDaniel*, 529 U.S. 473, 484 (2000)). The Court does not

believe that reasonable jurists would find the Court's assessment of Petitioner's claims debatable or wrong.

ACCORDINGLY, IT IS ORDERED:

1.   The Report and Recommendation of the Magistrate Judge (ECF No. 13) is **APPROVED AND ADOPTED** as the opinion of the Court.

2.   Petitioner's Petition for Writ of Habeas Corpus (ECF No. 1) is **DENIED**.

3.   Petitioner's request for a certificate of appealability is **DENIED**.

Dated: February 23, 2018   /s/ Robert J. Jonker
                                                        ROBERT J. JONKER
                                                        CHIEF UNITED STATES DISTRICT JUDGE